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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,740	06/23/2000	Edward A Hubbard	UNTD:009	6622

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EXAMINER
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SHAW, JOSEPH D

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 04/07/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/603,740

Applicant(s)

HUBBARD, EDWARD A

Examiner

Joseph D Shaw

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-53 is/are pending in the application.
- 4a) Of the above claim(s) 25-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Election/Restrictions***

1. Newly submitted claims 25-52 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

a. They claim the generation and assignment of priorities to clients and client workloads, wherein said priorities are used for scheduling the processing of workloads. These limitations were not originally elected for examination by the applicant.

2. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 25-52 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kisor et al. (6,098,091) in view of Kraft et al. (6,112,225).

b. As per claim 53, Kisor teaches:

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generating a status for the host distributed device comprising types of capacities of resources available in the host distributed system and utilizations of resources within the host distributed device (remote computers transmit resources available to the central computer including time of availability, amount of memory, transmission bandwidth, etc.; Fig. 3; col. 5, lines 19-45); and

sending the status of the host distributed device to the server system in response to a status request or automatically sending in response to a status change (central computer periodically polls the remote systems regarding when the remote systems will be available, and receives availability information; col. 2, lines 37-43).

However, the Kisor invention does not explicitly teach monitoring the resource utilization on the host device and modifying the status of the host device in response to the change of availability. Kraft teaches:

monitoring resource utilization within a host distributed device selected from the multiplicity of host distributed devices (multiple peripheral computers subscribe, monitor when the computer becomes inactive; col. 2, lines 18-27); and

modifying the status for the host distributed system whenever resources are added or deleted or when the availability of the resources change, thereby generating a status change (when computer becomes idle, an idle time activation program is executed; Fig. 6; col. 8, lines 36-67; when the computer is not idle, the idle time activation program stops; Fig. 7; col. 9, lines 37-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kisor to include monitoring the

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resource utilization on the host device and modifying the status of the host device in response to the change of availability, as taught by Kraft, because such an arrangement allows the remote computer to execute tasks assigned by the coordinating computer while the computer is idle (available), as taught by Kraft (col. 9, lines 1-35), and allows the remote computer to suspend the execution of assigned tasks when the status not idle (unavailable), allowing the remote computer to perform normal operations required by the operator, as taught by Kraft (col. 9, lines 37-42).


#### **Conclusion**

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
6. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D Shaw whose telephone number is 703-305-0094. The examiner can normally be reached on Monday - Thursday and alternate Fridays, 7am - 4pm.

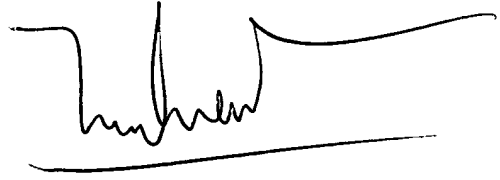
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8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharra can be reached on 703-305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph Shaw  
Examiner  
AU 2141



LE HIEN LUU  
PRIMARY EXAMINER